

1
2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 WILLIAM G. MOORE,
7
8 Petitioner,

9 v.
10
11

12 UNITED STATES OF AMERICA,
13 Respondent.

14 CASE NO. C10-5400BHS
15 (CR95-5415BHS)

16 ORDER TRANSFERRING
17 SUCCESSIVE 28 U.S.C.
18 SECTION 2255 PETITIONS
19 TO COURT OF APPEALS

20 This matter comes before the Court on William G. Moore’s (“Moore”) Petition for
21 a Writ of Habeas Corpus Under Title 28 U.S.C. § 2241. Dkt. 1. While Moore labels his
22 petition as one brought under § 2241, it is apparent to the Court from the face of Moore’s
23 petition that he raises previously unsuccessful claims attacking only the legality of his
24 conviction and not the execution of his sentence. *Porter v. Adams*, 244 F.3d 1006 (9th
25 Cir. 2001) (“will not permit a petitioner to circumvent the successive [28 U.S.C. § 2255]
26 motion bar by bringing a section 2241 petition”) *Cf. Doganiere v. United States*, 914 F.2d
27 165, 169-70 (9th Cir. 1990) (holding that motions brought under § 2255 can test the
28 legality of the sentence imposed, not the manner of its execution); *United States v. Giddings*, 740 F.2d 770, 772 (9th Cir. 1984) (stating that petitioners can challenge the execution of their sentences by bringing a petition under § 2241).

29 Here, although much of the first two pages of Moore’s petition contain arguments
30 as to why the petition is not a § 2255 motion, the Court concludes that such arguments
31 have no merit as the substantive arguments in Moore’s petition clearly address the
32 legality of his conviction rather than the execution of his sentence. *Cf. Doganiere*, 914
33 F.2d at 169-70; *Giddings*, 740 F.2d at 772. As the Ninth Circuit held, Moore cannot

34
35
36
37
38 ORDER

1 circumvent the successive § 2255 motion bar by labeling his petition as one brought
2 under § 2241. 244 F.3d at 1007. Therefore, the Court concludes that Moore's § 2241
3 petition is converted to a motion to vacate, set aside or correct sentence pursuant to §
4 2255 as the motion addresses Moore's sentence rather than the conditions of his
5 confinement. *See* 28 U.S.C. §§ 2241 & 2255.

6 Moore has previously filed at least ten successive motions pursuant to § 2255.
7 (*See* 3:07-CV-5457 at Dkt. 4). This Court lacks authority to review successive habeas
8 motions filed without an authorization from the Ninth Circuit Court of Appeals. § 2255.

9 Therefore, it is ORDERED that Petitioner's § 2255 motion is TRANSFERRED to
10 the Ninth Circuit Court of Appeals for determination of whether his motion should be
11 authorized pursuant to 28 U.S.C. § 2244(b)(3).

12 DATED this 16th day of June 2010.

13
14 
15 BENJAMIN H. SETTLE
16 United States District Judge
17
18
19
20
21
22
23
24
25
26
27
28